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Departmental Report No. 38

ADDRESSES

OF

HON. NORMAN J. COLMAN,

U. S. COMMISSIONER OF AGRICULTURE,

AND

DR. D. E. SALMON,

CHIEF OF THE BUREAU OF ANIMAL INDUSTRY,

BEFORE THE THIRD

NATIONAL CONVENTION OF STOCKMEN,

HELD AT

CHICAGO, ILL., NOVEMBER 17TH AND 18TH, 1885.



WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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THE AMERICAN BEEF SUPPLY.

ADDRESS OF HON. NORMAN J. COLMAN, UNITED STATES COMMISSIONER
OF AGRICULTURE.

Gentlemen of the Convention :

The history of the development and of the present wonderful magnitude of the cattle industry creates increased interest and fresh astonishment the more it is studied and the more we trace its relations to the comfort and prosperity of our people.

When the first accurate statistics of the cattle in this country were collected in 1850, it was found that we had in round numbers about 17,778,000 ; in 1860, 25,620,000 ; in 1870 this number had been reduced to 23,820,000 ; in 1880 there were 35,925,000, while in 1885 there are not far from 45,000,000. This last number is so great, that it is difficult for the human mind to grasp its significance or to appreciate the vast accumulation of cattle which it represents, which have been gathered together and reared by the industry and enterprise of our people.

If a solid column should be formed twelve animals deep, one end resting at New York City, its center encircling San Francisco, and its other arm reaching back to Boston, such a column would contain about the number which now forms the basis, the capital stock, so to speak, of the cattle industry of the United States. The value of these animals is not less than \$1,200,000,000.

While the cattle industry has reached this remarkable development, and those engaged in it have accumulated this fabulous aggregate of wealth, you, who represent the industry here to-day, find yourselves confronted by problems which have increased in seriousness even more rapidly than your herds have multiplied upon their luxuriant pastures. Insidious cattle-plagues exist in the country, and eternal vigilance is required to keep them from sweeping through your herds as a fire sweeps the dry grass from a prairie. To protect from these diseases, State regulations and State restrictions upon the movement of cattle have been formulated, which during the past year have been the cause of the most serious disturbance and loss to those engaged in this industry in a considerable number of States. Those who are raising cattle upon the arid plains of the West are becoming uneasy in regard to the security of their ranges. Our people are impatient under the restrictions upon

our foreign trade. And so, in whatever direction we turn, there are important questions to be met which will doubtless tax your talent, energy, and perseverance to the utmost, and require wise and united action to secure a satisfactory solution of them.

But it is not the cattle interests alone that has to meet these questions. When we attempt to consider the importance of the industries affected by them, we find that the various branches of the animal industry are so linked together that all are more or less affected. Contagious diseases are not confined to cattle alone. The swine industry is at this time perhaps the very greatest sufferer from them, and from all parts of the country comes up the cry for relief. Nor are these restrictions upon our foreign trade confined to cattle alone. Our sheep and swine are also slaughtered on the English docks with an even more destructive effect upon the traffic. The prohibition of our pork is only too well known; and the interest in a settlement of the range questions is shared by the breeders of cattle, horses, and sheep. The questions which a national convention of cattle-men must consider are, consequently, broad questions, which involve great principles, and are of national importance from various standpoints. And with you are directly interested the breeders and owners of the 13,000,000 of horses and mules, of the 50,000,000 of sheep, and of the 45,000,000 of swine. This great animal industry may be said, therefore, to be united in interest, and by embracing the horses, and cattle, and sheep, and swine, we have a capital represented of \$2,500,000,000.

The time has not long passed when those who called the attention of our public men to the legislation needed for the protection of our animal industry, and the commerce which flows from it, were treated in the most contemptuous manner. They were called cranks, and accused of designs on the national Treasury, and it was supposed that the highest degree of ridicule was reached when the bills which they advocated were referred to as "cow bills." Just how this could have been done in an essentially agricultural country, where the animal industry makes up so large a part of the national wealth, and where so many other kinds of business depend upon this for their profits, it is hard to understand. It seems evident, however, that the great importance of this industry has never been sufficiently impressed upon the public mind.

In the thirteen Southern States, beginning with Virginia and ending with Texas, and including Kentucky, Tennessee, and Arkansas, all the assessed real estate and personal property, as returned in the census of 1880, did not equal the present estimated value of our animal industry. And all the New England States combined, with the single exception of New Hampshire, did not have enough assessed valuation in 1880 to equal the present value of our domestic animals.

You all know what an enormous amount of cotton is produced in the Southern States, and those who have been in the South when this crop was being marketed, and have seen the bales piled up on every wagon

that was entering the towns, who have seen the warehouses overflowing, the railway stations and platforms overwhelmed, and the trains loaded down with this staple, can realize more plainly than I can picture the magnitude of the cotton crop. Still, in 1880, our railroads carried two and one-half times as many tons of live-stock as of cotton. Why, gentlemen, the product of our animal industry in 1884, including meat, and labor, and dairy products, and wool, and lard, and tallow, and hides, &c., was four times as much as the gross earnings of all the railroad companies in the United States.

The animal industry is not only great in itself, but it is great in the assistance which it renders to other productive industries. Take the greatest crop produced in this country—the corn crop—and 72 per cent. of that is dependent upon our animal industry for a market. Take the great hay crop, and there is no other way to utilize it; and the oat crop, which mostly goes for animal food. The value of these three crops, which are marketed as animal food, of itself reaches a thousand millions of dollars a year.

Now what is the effect of a contagious disease which destroys a considerable proportion of the animals depended on to market these crops, and consequently makes the production of meat more difficult? Evidently it will have a double effect. It will increase the price of meat or other animal products without benefiting any one, because it will be more expensive to produce it. It will also reduce the value of these enormous crops I have mentioned, because they cannot be fed to the same advantage. That is, such a disease injuriously affects the feeder of the meat-producing animal, the grower of the hay and grain crops, and the consumer of the meat or other product, and in one or the other of these classes every person in the country is included.

These remarks have not been made for the mere purpose of giving pleasure by leading you to contemplate the greatness of the enterprise in which you are engaged, but rather to impress the idea of the importance of this industry from a national standpoint, and the great necessity of its being protected from the dangers which surround it. It is the future prospects of this industry that are mainly to be considered to-day, and these concern not only those who have their capital embarked in it, but every one interested in the prosperity of our country, and in the preservation of a cheap food supply.

There is an impression throughout the country that the cattle business has been developed far beyond what is necessary or even prudent. Our people have seen the cattle men go out over the plains, on the Great American Desert, over the foot-hills of the Rockies, and in the valleys of that great range of mountains, and beyond, and possess the country. And now in all that immense region, comprising millions, and, indeed, hundreds of millions, of acres, wherever water exists there has been established a breeding ground for cattle. To-day the Eastern capitalist goes to the far West, and, animated with the spirit of the pio-

neer, pushes hundreds of miles from the railroad to find an unoccupied portion of Uncle Sam's domain suited to a ranch enterprise. Just as he reaches a section supplied with water, where he thinks the white man's foot has never trod before, he stumbles upon a cattle ranch. And not only does he find that the country is already occupied, but that different companies are already crowding each other, and that there is no room for a new-comer.

What wonder, then, that our people, who have seen this enormous range cattle industry spring into existence within the last ten or fifteen years and spread out over this boundless territory, should jump to the conclusion that the cattle business was being overdone? But this is not the case. Notwithstanding the wonderful increase of the past fifteen years, an increase which it is safe to say will never be repeated in the same time in this country for lack of territory, we have just about the same number of cattle per thousand inhabitants that we had in 1850, and less than we had in 1860. I have no doubt that to many this statement will appear incredible; but a glance at the figures cannot fail to convince the most skeptical. In 1850, we had a population of 23,191,876, and 17,778,907 head of cattle, or 766 cattle to the thousand inhabitants; in 1860 we had 814 cattle to the thousand population; in 1880 we had but 716 head to the thousand; and if we estimate our population in 1885 at 57,000,000 and our cattle at 44,000,000, we would only have 772 to the thousand at this time. In other words, although our cattle have increased in an almost fabulous manner, our population has increased with equal rapidity.

It is, however, only this new region that has so recently been developed west of the Mississippi that has enabled the increase of our cattle to keep pace with the population. In the older settled States the agricultural class has not held its own in its relation to the other classes of our population; farms have been divided and subdivided, and cattle raising, and particularly beef production, has given way to grain raising and to fruit and truck farming. The effect of this upon the cattle industry is very remarkable. In 1850 we had in the States east of the Mississippi 722 cattle to the thousand inhabitants; in 1880 we had but 521 to the thousand. And if we take the oldest settled States, like New York and Connecticut, we can see still more plainly what we are coming to in the near future. In 1850 New York had 606 cattle to the thousand inhabitants; in 1880 she had but 460. In 1850 Connecticut had 575 cattle to the thousand inhabitants; in 1880 she had but 380.

This condition of the cattle business in the Eastern States reminds us very forcibly of the relation of the cattle to the population in the various countries of Europe, where roast beef has become a luxury, to be enjoyed only on rare occasions by any but the upper classes. Let us compare the figures for our old settled States with some of the European countries according to latest statistics. New York, 460 cattle to the thousand inhabitants; Connecticut, 380; Germany, 367; France, 306; Great

Britain and Ireland, 297. This shows that our Eastern States are rapidly approaching the condition of the European countries in the proportion of cattle to population; and if this proportion continues to decrease in New York in the future as rapidly as it has in the past thirty years it will be as low as in Germany within twenty-one years, and as low as in Great Britain and Ireland in less than thirty years.

There is another consideration that we cannot forget in discussing this question of the comparative beef supply in different countries, and that is the amount of meat consumed per capita. In the United States, from being long accustomed to an abundant supply of meat, and owing also to the prosperous condition of our people, we consume more meat per head than any other country. The estimates from the most recent statistics are as follows: In the United States we consume 150 pounds of meat per capita; Great Britain consumes 109 pounds; Denmark, 76 pounds; Belgium, 74 pounds; France, 70 pounds; Germany, 66 pounds; Austria, 53 pounds; Greece, 50 pounds; Holland, 48 pounds; Spain and Portugal, 48 pounds; Russia, 47 pounds; and Italy, only 18 pounds. Considering the habits of our people and the consumption of meat per capita, New York already has a smaller beef supply than Germany, and in twelve years will have no greater one than England.

Of course, we all understand that there is an element of uncertainty in such figures; but for the purpose for which they are introduced here, viz., to show how rapidly our meat supply is diminishing in proportion to our population in the older settled part of the country, they may be accepted as substantially correct, and the conclusion drawn from them as inevitable.

Another reason why the falling off of the meat supply in this country is a fact deserving the most serious attention, is the increasing meat consumption of Europe. The following figures in regard to Great Britain are from good authority: In 1840 the consumption of meat per head was 61 pounds; in 1850 it was 67 pounds; in 1860, 77 pounds; in 1870, 88 pounds; in 1875, 96 pounds; and in 1882, 109 pounds per annum. This is a most remarkable increase, and taken in connection with the fact that the population of Great Britain is increasing at the rate of a thousand a day, requiring that the meat supply at the present rate of consumption must be increased 40 millions of pounds per annum, it shows how soon the question of meat supply is going to force itself upon the attention of those who direct national policy at home and abroad. There is already a great deficiency in the meat supply of Europe. Thus the demand in Great Britain above what she produces is 654,000 tons; France, 235,000 tons; Germany, 100,000 tons; Belgium, 75,000 tons; making a total deficiency of 1,064,000 tons. To supply this, there is a surplus in Russia of 65,000 tons; Austria, 60,000 tons; Denmark, 44,000 tons; Greece and Roumania, 28,000 tons; Holland, 25,000 tons; Italy, 25,000 tons; Spain and Portugal, 20,000 tons; a total surplus in these nations of 267,000 tons. Taking this surplus from the

deficiency in the other countries and there still remains in Europe a deficiency of 797,000 tons of meat which must be supplied chiefly by America.

These figures show how important it is that the meat supply of the United States should be guarded with the greatest care, and that no danger should be allowed to threaten any of the branches of the animal industry in our country.

The cattle business is one which must of necessity be of slow development and can never be rapidly increased, no matter how great the necessity. With almost any other product the demand, however fluctuating, can soon be met. If wheat, or corn, or oats, or cotton, is in great demand and bears a high price, any of these products can be raised to meet the demand. The supply can be increased in a single year a hundred or a thousand fold. And so it is easy to supply the increased demand for any manufactured article to any extent, even to the overstocking of the market, to the breaking down of prices, and involving those engaged in the business in bankruptcy. This is not true of the cattle business, however. By no possible means can cattle be made to breed like rabbits; nor is there any artificial way by which cattle can be hatched as chickens are in an incubator. It is only by the slow, steady increase of one calf a year from each cow that progress can be made, and that progress, it is evident from the figures which have been presented, will be insufficient in the future to supply our growing demands. While it is this slow increase that gives the greatest stability to the business of cattle raising, insures it from being overdone, and is a guarantee of the safety of the investment, it is this same feature that makes it difficult to recover from a misfortune that decreases the reserve stock of these animals. This has been plainly illustrated even in our country during the last twenty-five years of our history.

In 1860, at the beginning of the war, we had 814 cattle to 1,000 population. During the war the stock was so decreased that in 1870 we had but 618 to 1,000 population; and now, twenty years after the close of the war, with the most favorable conditions for the multiplication of our cattle, with an unexampled investment of capital and enterprise in the business during these years, we have not yet recovered the position occupied in 1860, and have not more than 772 cattle to 1,000 population at this time.

We may draw from this one of the most instructive lessons as to the importance of protecting our great herds of cattle from the inroads of contagious disease. Let pleuro-pneumonia or any of these cattle plagues sweep over our territory, destroy our breeding stock, and discourage our breeders, and the youngest child in this country could not hope to live long enough to see the cattle business, or, in other words, the beef supply, of this country upon as favorable a basis as it occupies to-day.

Any cause tending to decrease the cattle of the country must have a

much more serious effect in the future than could have resulted at any time during our past history. Not only has much of the land formerly devoted to pastures been turned to other uses, but we have a much greater population, and one that is increasing with unexampled rapidity, to be fed. From the adoption of the Declaration of Independence to the present the population of this country has about doubled every twenty-five years. Commencing, for convenience, at 1775, we find there were then about 3,000,000 of people in the country. In 1800 we had 6,000,000; in 1825, 12,000,000; in 1850, 24,000,000; in 1875, but for the effects of our civil war, we should have had 48,000,000. Now, if we take 1880 for a new starting point and go on at the same rate we cannot fail to be deeply impressed by the changes which must certainly occur in the near future, and by the vastly increased food supply that will be required. In 1880 we had 50,000,000 of inhabitants; in 1905 we should have 100,000,000; in 1930, 200,000,000; in 1955, 400,000,000; in 1980, less than 100 years hence, 800,000,000 of inhabitants.

Where are these teeming millions to live? On what are they to subsist? Where and how are the cattle to be bred and reared that must be relied upon to furnish beef? To keep up our present beef supply we must increase our stock of cattle to 70,000,000 within 20 years and to 140,000,000 within 45 years.

Is it possible for us to accomplish this under the most favorable conditions? In the States east of the Mississippi in 1850 we had 15,300,000 cattle; in the 30 years from 1850 to 1880 the cattle in these States increased only 5,000,000 head, or $33\frac{1}{3}$ per cent. Taking the country as we find it to-day, is there any reason to suppose that the percentage of increase will be any greater in the next thirty years than it has been in these States during the last thirty?

With this great problem of food supply confronting us, then, with the inevitable certainty that our meat production will prove insufficient for the demand in the near future, it has already become a question of great national importance to decide what we can do to insure our flocks and herds against those destructive animal plagues which have repeatedly caused havoc among the meat-producing animals of every country in the Old World.

There is scarcely a nation of Europe, no matter how insignificant its possessions of domesticated animals, that has not efficient laws and regulations based upon the latest developments in the world of veterinary science. Even New Zealand and the Sandwich Islands have practical and effectual laws for the extirpation of animal diseases, while we in the United States are without the power to accomplish this except where it can be done under local laws. The subject of contagious diseases has been specially mentioned because it is the great danger, and the only danger, which seriously threatens the prosperity of our animal industry. We have seen it threatening not only the animals exposed to disease, but owing to local regulations which it has been considered necessary

to adopt by the various States, it has had a most disastrous effect upon inter-State commerce, and has in this way cost the affected States many times more than was lost by the ravages of disease. The same is true of our foreign commerce.

Great Britain, our best customer, will not permit our live animals to go inland, but cattle, sheep, and swine must be slaughtered upon the docks where they are landed.

Can we, as an intelligent people, permit the cause of this danger and this loss to remain in our midst, when we can remove it completely by the expenditure of but a small fraction of the sum that is now annually lost? Were this done the investment of money in cattle would be in the future, as in the past, one of the safest of all investments and yielding returns which few other branches of legitimate business could approach.

The Bureau of Animal Industry has been struggling to prevent the further extension of pleuro-pneumonia into the uninfected parts of the country, and in this it has been successful, although the present law does not admit of prompt and vigorous action for the suppression of the disease even when the greatest danger is to be feared from it.

At the time I assumed charge of the Department of Agriculture a very serious outbreak was in progress in Missouri, and could have been suppressed at once by the expenditure of less than \$20,000. The Bureau at that time had much more than that amount at its disposal from the sum appropriated for its use, but unfortunately it could not be applied for the purpose of slaughtering diseased animals. The result shows only too plainly how expensive is any other plan of dealing with such a plague. Although the Bureau of Animal Industry kept two thoroughly competent inspectors upon the ground, the presence of diseased animals made it necessary to place restrictions upon the movement of cattle and to prohibit shipment from several counties. Neighboring States quarantined against Missouri, and it was necessary to establish an elaborate system of inspection. Now, these restrictions upon inter-State commerce, for the time being, almost completely interrupted the cattle traffic of the State, depressed the value of cattle to an alarming extent, and, according to the most reliable estimates, caused a direct loss to the State of over \$2,000,000. In other words, the loss was a hundred times the sum which would have been sufficient to remove all danger when the disease was first discovered.

In Kentucky there was another center of disease which had been neglected for months, and which it seems from later developments was continually extending its limits, until it had become a plague-spot dangerous to the whole country. Some months ago the State authorities, becoming alarmed by the danger which had menaced them so long, instituted a vigorous policy for isolating the diseased animals if they could not destroy them, and asked the co-operation of the Bureau of Animal Industry. An inspector was at once dispatched there to take

charge of the work, and it affords me pleasure to state that unexpected progress has been made, not only in preventing the spread of the disease, but in lessening its extent, and it is now hoped that this great source of danger will be completely suppressed within a very few months.

It is a matter for congratulation that the dissemination of this dangerous disease in the West, which a year ago threatened to work an irreparable injury to the cattle industry, has by vigorous and intelligent effort and favoring circumstances been completely checked, that the contagion has been removed from Missouri, Illinois, and Ohio, and that so much progress has been made in Kentucky.

In the East the efforts of the Bureau have been necessarily confined to a large extent to an inspection that will enable us to place an accurate report before Congress as to the prevalence of the disease, and the measures necessary for its eradication. In New Jersey our inspectors have co-operated with the State authorities, and in this way have done much to control the affection. In Delaware the funds appropriated by the legislature were soon exhausted, and it became necessary to release diseased herds. To prevent this the State veterinarian was made an inspector of the Bureau of Animal Industry, and the quarantine has been maintained. By this means infected animals which would certainly have been shipped to other States have been held, and in some cases slaughtered for local consumption.

To sum up the situation in regard to pleuro-pneumonia, the country at large is in a much better condition than it was a year ago, but the old centers of disease in the East remain, most of them unguarded, and no one can tell how soon it may again be carried to the great stock-growing States of the Mississippi Valley or to the ranges of the plains.

When it comes to other diseases the Bureau has neither the power, the force of inspectors, nor the money which would justify it in taking any action. Hog cholera has been unusually prevalent over the whole country during the year, and its ravages will cost the nation from \$25,000,000 to \$30,000,000. Why should not we adopt as vigorous and intelligent measures for suppressing it here as are in force in Great Britain, especially as we have twelve times as many animals that are subject to it?

These diseases are simply referred to as examples of plagues that we are nurturing in our midst. There are still others possibly equally dangerous and destructive which are rapidly forcing themselves upon our attention, and which must soon be met by a settled and determined policy.

These are serious and important questions which a national convention like this may consider with great profit to their industry, and I commend them to you as fitting subjects for the most careful deliberation.

NATIONAL LEGISLATION FOR THE CONTAGIOUS DISEASES OF ANIMALS.

ADDRESS OF DR. D. E. SALMON, CHIEF OF THE BUREAU OF ANIMAL
INDUSTRY.

GENTLEMEN: The enormous development attained by the cattle industry has been a matter of gratification and surprise to all who have recently investigated it. The importance of this industry as a factor in inter-State commerce and its relations to national prosperity are so manifest that it is not necessary for me to discuss in detail this aspect of the subject. Forty-five million head of cattle and \$1,200,000,000 of invested capital carry sufficient force by their bare enumeration to satisfy any intelligent person that this is one of the great industries of the nation. Of still more value is it to the country because it is a productive industry, taking the raw material as it is furnished by nature, on the fields of the East and the plains of the West, and converting it into the highest grade of human food. But laws for protection against contagious diseases of animals are not to be limited to cattle alone; other species of domesticated animals are equally subject to them and equally endangered. The loss of \$20,000,000 worth of swine per annum from contagious diseases is a striking example of this. Really, then, the commerce which seeks protection is that which flows from an investment in animals of \$2,500,000,000, and an industry which penetrates to every State and county and town in this great land of ours.

RELATION OF CONTAGIOUS DISEASES TO COMMERCE.

It is by this commerce that such diseases are carried. In olden times the chief agents for the dissemination of contagion were the contending armies which marched and counter-marched through nearly all the countries of Europe, gathering the seeds of these dreaded plagues in the most obscure districts, multiplying them by providing susceptible subjects among the animals driven along to furnish supplies, and scattering them broadcast along the line of march. To-day, from the wonderful revolution in transportation facilities which has resulted from the application of steam-power, contagious diseases may be distributed more rapidly through the ordinary channels of commerce than was formerly possible during the most extensive wars. The mighty steamships, that plow their way across the Atlantic in a few days, bring ani-

mals which may have been exposed to contagion in Europe, and yet will show no signs of disease for days or weeks after they are landed on our shores. And once a disease has gained a lodgment here, how silently and rapidly may it be carried, from the East to the West, from the North to the South, by the swift-rolling cars of a thousand trains!

This distribution of diseases by commerce, as it is at present conducted, and the direct losses from their ravages, are but a part of the losses which our country is called upon to bear. The restrictions upon our foreign commerce, which are a consequence of the existence of communicable diseases in this country, have become familiar to all, but the intolerable nuisance of State and Territorial restrictions is just beginning to make itself felt, and it may be safely asserted that when forty different States and Territories have forty different sets of laws and regulations governing the movement of live stock, the losses from these restrictions on commerce will be forty times worse than the most vivid imagination can portray them at this time. Try for a moment to realize the amount of legal lore and the diplomacy that would be required to successfully carry a calf from New York to San Francisco under such circumstances! But woe to the man who tried to accomplish this feat without first securing a proper history of the animal, duly certified to by sworn evidence. For him ten quarantine stations would stand ready with open gates to take him in for three months each, or in the aggregate two years and a half.

COMMERCE REGULATED BY CONGRESS.

Mr. Webster, in one of his great efforts before the United States Supreme Court in 1824, said:

Few things were better known than the immediate causes which led to the adoption of the present Constitution; and he thought nothing clearer than that the prevailing motive was to regulate commerce; to rescue it from the embarrassing and destructive consequences resulting from the legislation of so many different States, and to place it under the protection of a uniform law. * * *

Over whatever other interests of the country this Government may diffuse its benefits and its blessings it will always be true, as matter of historical fact, that it had its immediate origin in the necessities of commerce; and, for its immediate object, the relief of those necessities, by removing their causes, and by establishing a uniform and steady system.

If that were true at the time of the adoption of the constitution, when we had but four millions of inhabitants and thirteen States, how much stronger are the reasons, for a uniform national regulation of commerce at the present day, with our 57,000,000 inhabitants, and a great empire stretching from the lakes to the gulf and from ocean to ocean? What makes it essential, however, that we should have uniform national regulations, is the fact that the States of which this nation is composed are to-day bound together by railroads and telegraphs, by our extensive postal system, and by the interchange of newspapers, more closely than were the counties of any State at the formation of our Union.

Trade, commerce, and travel, go on as though there were no State lines; trains heavily laden with living animals roll from the interior to the seaboard, or from the seaboard to the interior, crossing State after State without regard to boundaries, and it is utterly impossible for local authorities to enforce any efficient system of inspection for the vast moving throng of animals at every point where it crosses from one State into another.

The Constitution provides that—

Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Now the suppression of contagious diseases of animals, looked at from a national stand point, is a regulation of commerce and nothing else. What was it that first directed the attention of the country to the existence of pleuro-pneumonia among the cattle of the East? Was it appeals for help from the dairymen of that region? Did the interested States ask to be assisted in ridding themselves of the disease? On the contrary the plague was concealed, its existence was denied, and there certainly was no desire in the worst infected regions for Federal interference. The reason for this is plain, and it is a commercial reason—to admit the disease would be to lose their trade in thoroughbred animals and in milk.

RESTRICTIONS ON COMMERCE.

On the other hand, the first event to awaken our stockmen to a realization of the existence of this serious danger was the British restrictions placed upon the live cattle trade. These restrictions, besides greatly reducing our trade, cost us at least one and a half millions annually, being the difference in what we now receive and in what the same cattle would bring if they were admitted without restrictions. In addition, the exportation of store cattle to England, which ought to be a large trade, is entirely prohibited. To secure the removal of these restrictions, that is, to regulate commerce, was the first great reason for asking national legislation on this subject.

Then the owners of cattle in the States not yet infected began to realize their danger from an unrestricted commerce in animals from infected States, and they asked for such regulations as should protect them. But commerce has not been so regulated, and pleuro-pneumonia has been carried through the channels of commerce to Ohio, Illinois, Missouri, Kentucky, Tennessee, and West Virginia. We now see State regulations adopted by a whole group of States here in the West, which, while they pretend to be local police laws, practically regulate commerce on a gigantic scale, and which interfere with the movement of cattle to a very alarming extent. Cattle, the subjects of inter-State commerce, are stopped at State lines; they are delayed for inspection; if their history is not satisfactory they may be quarantined for months, whether sick or well; the owner is charged inspection fees; he is put to extraordinary

expense in holding his cattle; he may be stopped at the next State line and the next, and forced to undergo this delay and expense again and again, and, to crown all, the cattle from a whole State or section of the country are prohibited, when there may be but a single county infected and but a single diseased herd in this county. These regulations have cost the inter-State commerce of Kentucky, and Tennessee, and Missouri, and Illinois, and Ohio, and Pennsylvania, and New York, and New Jersey, and Maryland, and Texas millions upon millions of dollars during the past year, and they have excited rivalries and contentions which have led to breaches of the peace in some instances and very nearly to bloodshed in others.

The second great reason for asking national legislation is, therefore, to protect the cattle of the West from an infected commerce, and the commerce of the country from these needless vexations and ruinous local restrictions on inter-State commerce. That is, the question at this time is entirely a commercial question; it is a request for Congress to so regulate commerce as to prevent the extension of contagious diseases, and to remove, and in the future prevent, restrictions on our foreign and inter State commerce.

When important measures like this are proposed two questions naturally suggest themselves to those who consider their advisability: First, is the affected industry of sufficient magnitude and importance from a national standpoint to receive so much consideration? Secondly, has Congress the undoubted power to grant the needed relief?

MAGNITUDE OF THE INDUSTRIES AFFECTED.

The national importance of the two chief industries involved may be seen by a condensed statement, as follows:

	Value.
Cattle industry, 45,000,000 head	\$1,200,000,000
Annual production, 7,000,000 head	350,000,000
Become a part of inter-State commerce, 5,000,000 head	250,000,000
Veals, 3,000,000	15,000,000
Export trade, the greater part of which is under restrictions, 182,000 head	13,000,000
Total exports of cattle and cattle products	50,867,000
The swine industry, annual product, 29,000,000 head	340,000,000
Value of the product which goes into inter-State commerce	243,000,000
Annual product exported	92,000,000

Upon figures like these it is unnecessary to comment. If industries and a commerce of such dimensions are not worthy of protection and encouragement, then there surely must be few subjects left of sufficient importance to engage the legislative mind.

I have lately secured some figures which demonstrate very conclusively the effect of restrictions upon our export trade. In 1879 the same restrictions were placed upon the sheep and pigs which we export alive to Great Britain that were placed upon our cattle, viz., it was

ordered that they should all be slaughtered at the place of landing. The effect on the sheep trade was as follows: In 1879 we exported 108,000; in 1880, 80,000; in 1881, 60,000; in 1882, 46,000; in 1884, 32,000. The effect on the hog trade was equally disastrous: In 1879 we exported 25,000; in 1880, 10,000; in 1882, 1,000; in 1884, 4 solitary animals.

THE POWER OF CONGRESS.

The second question is a legal one. It has engaged the attention of gentlemen standing high in the councils of the nation, and they have differed in regard to it. And if men go on trying to settle it in the future as they have in the past, by reasoning from preconceived ideas, or attempting to evolve the truth from their inner consciousness, they will undoubtedly continue to differ until the end of time.

It would be folly for me to offer any opinions of my own on constitutional law, but it seems to me that we can do better than to take any man's opinion. We have the Constitution, and we have constitutional law as it is laid down in the decisions of the Supreme Court of the United States, and if we expect to understand the practical meaning of the Constitution and to comprehend the spirit of our form of government, we certainly cannot do better than to turn to the opinions of the Supreme Court for instruction. We will not find confusion and uncertainty there, but, beginning in 1819 and coming down almost to the present time, there are decisions bearing upon the points involved in this legislation for contagious animal diseases; and any one studying those decisions in a careful and unbiased manner can, in my judgment, have no doubt as to whether the subject comes under State or national jurisdiction, nor as to whether Congress has the power to enact efficient legislation.

The Constitution of the United States expressly provides that commerce shall be regulated by Congress—"commerce with foreign nations, among the several States, and with the Indian tribes." And it is to be noted here that the power of Congress over inter-State commerce is granted to the same extent and with exactly the same words as in regard to commerce with foreign nations.

MEANING OF "COMMERCE."

Now, the first point for us to get a clear idea of is the meaning of the word "commerce" as it is used in this grant of power; because everything depends upon the meaning which the tribunals of last resort attach to such important words. Fortunately, Chief Justice Marshall, in the celebrated case of *Gibbons v. Ogden*, tells us exactly what we want to know. He says:

It has, we believe, been universally admitted that these words comprehend every species of commercial intercourse between the United States and foreign nations. No sort of trade can be carried on between this country and any other to which this power does not extend. It has been truly said that commerce, as the word is used in the Constitution, is a unit, every part of which is indicated by the term. * * *

The subject to which the power is next applied is to commerce among the several States. The word among means intermingled with. A thing which is among others is intermingled with them. Commerce among the several States cannot stop at the external boundary line of each State, but may be introduced into the interior.

In the case of the Philadelphia and Reading Railroad Company *v.* Pennsylvania, and in Railroad Company *v.* Husen, it is plainly stated—

That the transportation of property from one State to another is a branch of inter-State commerce is undeniable.

Pomeroy, in his well-known work on the Constitution, says:

Commerce includes means, instruments, and places by and in which intercourse and traffic are carried on; and, further still, comprehends the act of carrying them on at these places and by and with these means.

Lakes, rivers, canals, roads, turnpikes, and railways are channels for intercourse and traffic, and commerce carried on by these, if foreign or inter-State, is as much a subject of regulation by Congress as that transacted over the highway of nations.

MEANING OF "REGULATE."

The other important word to be considered is "regulate." Chief Justice Marshall, in the case already referred to, said:

It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution. * * * If, as has always been understood, the sovereignty of Congress, though limited to specified objects, is plenary as to those objects, the power over commerce with foreign nations and among the several States is vested in Congress as absolutely as it would be in a single government having in its constitution the same restrictions on the exercise of the power as are found in the Constitution of the United States.

In the case of Railroad Company *v.* Husen it was said:

Transportation is essential to commerce, or rather it is commerce itself; and every obstacle to it, or burden laid upon it by legislative authority, is regulation.

Pomeroy says:

Regulating means prescribing rules for carrying on the matter regulated, which rules may either place restraints and hindrances upon the free conduct of the intercourse and traffic, or may remove all restrictions upon the free enjoyment and exercise thereof. Whether Congress shall adopt one or the other of these systems, and propose to itself one or the other of these ends, is entirely a matter of policy with which courts have no concern. (Page 244.)

FEDERAL AUTHORITY WITHIN THE STATES.

We will now see to what extent the Supreme Court admits that Federal authorities may go beyond State lines and into the States to carry into effect the authority granted by the Constitution.

Chief Justice Marshall, in the learned opinion given in 1824, in the case of *Gibbons v. Ogden*, said:

But in regulating commerce with foreign nations the power of Congress does not stop at the jurisdictional lines of the several States. It would be a very useless power if it could not pass these lines. The commerce of the United States with foreign nations is that of the whole United States. Every district has a right to par-

ticipate in it. The deep streams which penetrate our country in every direction pass through the interior of almost every State in the Union, and furnish the means of exercising the right. If Congress has the power to regulate it, that power must be exercised wherever the subject exists. If it exists within the States, if a foreign voyage may commence or terminate within a State, then the power of Congress may be exercised within a State.

This principle is, if possible, still more clear when applied to commerce "among the several States." They either join each other, in which case they are separated by a mathematical line, or they are remote from each other, in which case other States lie between them. What is commerce "among" them, and how is it to be conducted? Can a trading expedition between two adjoining States commence and terminate outside of each? And if the trading intercourse be between two States remote from each other, must it not commence in one, terminate in the other, and probably pass through a third? Commerce among the States must of necessity be commerce with the States. * * * The power of Congress, then, whatever it may be, must be exercised within the territorial jurisdiction of the several States.

In *Brown v. Maryland*, decided in 1827, these principles were reaffirmed, and it was held that Congress has a right not only to authorize importation, but can extend its power into the interior of a State and authorize the importer to sell the articles imported.

In the case known as *United States v. Coombs*, Justice Story, in 1838, said :

The power to regulate commerce includes the power to regulate navigation, as connected with the commerce of foreign nations and among the States. * * * It does not stop at the mere boundary line of a State, nor is it confined to acts done on the water or in the necessary course of the navigation thereof. It extends to such acts done on land which interfere with, obstruct, or prevent the due exercise of the power to regulate commerce and navigation with foreign nations and among the States. Any offense which thus interferes with, obstructs, or prevents such commerce and navigation, though done on land, may be punished by Congress, under its general authority to make all laws necessary and proper to execute their delegated constitutional powers.

That is to say, according to the decision of the United States Supreme Court, Congress has the same power over inter-State commerce that it has over foreign commerce, and this power extends as well to the railroads, canals, turnpikes, and common roads within a State as it does to navigable rivers or to the vessels which cross the ocean, for there is no road or lane so obscure in these times but that it is used sooner or later by animals or men on their way from one State to another. But the power of Congress goes farther even than this; it may prevent and punish offenses committed at a distance from navigable waters, railroads, or common roads if those offenses are of a nature to interfere with or obstruct foreign or inter-State commerce.

Consequently, as there is nothing at this time which so interferes with and obstructs foreign and inter-State commerce as the existence of contagious diseases of animals, and as parties in various States are continually committing the offense of keeping these diseased animals where they may infect other animals passing along the roads on their way to other States, as they are selling animals from infected herds and even diseased animals to be conveyed to other States, it seems very plain,

according to these decisions, that Congress has sufficient power to prevent this interference with and obstruction of inter-State commerce. It can not only prevent the conveying of diseased animals from State to State, but it can go within the State, along the railroads and other public roads, and discover and take measures to extirpate the disease. And if the keeping of such affected animals, even at a distance from such highways, is an obstruction to inter-State or foreign commerce, the power of Congress can still reach them. For the regulation of such commerce, that is, for promoting commerce, for removing obstructions to it and restrictions that are upon it, for preventing interference with it, and for protecting it from sources of danger, the power of Congress is supreme and extends to any part of the country to which inter-State or foreign commerce extends, or where such obstructions, restrictions, interference, or danger exist.

If there are still any doubts of the constitutionality of Congress enforcing its authority within the States to the extent which is necessary to secure the removal of the dangers, restrictions, and obstructions to inter-State commerce, the decision of the Supreme Court in the case of *McCulloch v. State of Maryland*, rendered as long ago as 1819, should be sufficient to remove such doubt. In that opinion it was said:

The Government which has a right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means; and those who contend that it may not select any appropriate means, that one particular mode of effecting the object is excepted, take upon themselves the burden of establishing that exception.

Take, for example, the power "to establish post-offices and post-roads." This power is executed by the single act of making the establishment. But, from this has been inferred the power and duty of carrying the mail along the post-road, from one post-office to another. And, from this implied power, has again been inferred the right to punish those who steal letters from the post-office or rob the mail. It may be said, with some plausibility, that the right to carry the mail, and to punish those who rob it, is not indispensably necessary to the establishment of a post-office and post-road. This right is indeed essential to the beneficial exercise of the power, but not indispensably necessary to its existence. So of the punishment of the crimes of stealing or falsifying a record or process of a court of the United States, or of perjury in such court. To punish these offenses is certainly conducive to the due administration of justice. But courts may exist, and may decide the causes brought before them, though such crimes escape punishment.

We admit, as all must admit, that the powers of the Government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.

To show how liberal a construction has always been given to this section of the Constitution granting the power to regulate commerce, Pomeroy says :

Under this grant Congress has assumed to enact laws for the improvement of harbors, the construction of piers, the erection of an astronomical observatory, the conduct of a coast survey. It has invaded the common law by limiting the liability of carriers on the ocean and the great lakes; it has sent out expeditions to observe an eclipse and to explore the topography of the Dead Sea. All of these acts are, indeed, means which plainly tend to the regulation of commerce; none of them are indispensable to it. Yet, I think, it is not assuming too much to assert that the nation has settled down to the opinion that these and similar measures are proper and lawful.

Taking as a guide the paragraphs which have been quoted, and many similar ones which cannot be referred to in a limited paper, and there seems to be no reasonable doubt that Congress has the authority, under the section granting it power to regulate commerce, to cause an inspection to be made to discover the existence of such diseases as pleuro-pneumonia which endanger our commerce, and cause embarrassing restrictions to be placed upon it. Congress can also, in case such diseases are found, provide for a suitable quarantine to prevent their spread and enforce measures of disinfection, and it can do this as well in the interior of the States as at their boundary lines.

INFECTED CATTLE MAY BE SLAUGHTERED UNDER THE RIGHT OF EMINENT DOMAIN.

The most important measure of all, indeed the essential one, in an endeavor to extirpate pleuro-pneumonia and like diseases, is the slaughter of diseased and infected animals. Has Congress the power to authorize this very essential measure? Under the section of the Constitution which we have been considering, if taken by itself, there might be some doubts of such a power, but it has always been recognized that the United States Government has the right of eminent domain, and that it can exercise this right whenever it becomes necessary in the performance of its proper functions.

In the case of *Kohl et. al. v. United States*, the opinion of the Supreme Court is stated in very plain language, as follows:

It has not been seriously contended during the argument that the United States Government is without power to appropriate lands or other property within the States for its own uses, and to enable it to perform its proper functions. Such an authority is essential to its independent existence and perpetuity. These cannot be preserved if the obstinacy of a private person, or if any other authority, can prevent the acquisition of the means or instruments by which alone governmental functions can be performed. The powers vested by the Constitution in the General Government demand for their exercise the acquisition of land in all the States. * * * If the right to acquire property for such uses may be made a barren right by the unwillingness of property-holders to sell, or by the action of a State prohibiting a sale to the Federal Government, the constitutional grants of power may be rendered nugatory, and the Government is dependent for its practical existence upon the will of a State

or even upon that of a private citizen. This cannot be. No one doubts the existence in the State government of the right of eminent domain—a right distinct from and paramount to the right of ultimate ownership. It grows out of the necessities of their being, not out of the tenure by which lands are held. It may be exercised, though the lands are not held by grant from the Government, either mediately or immediately, and independent of the consideration whether they would escheat to the Government in case of failure of heirs. The right is the offspring of political necessity; and it is inseparable from sovereignty, unless denied to it by its fundamental law. * * * But it is no more necessary for the exercise of the powers of a State government than it is for the conceded powers of the Federal Government. That Government is as sovereign within its sphere as the States are within theirs. True, its sphere is limited. Certain subjects only are committed to it; but its power over those subjects is as full and complete as is the power of the States over the subjects to which their sovereignty extends. The power is not changed by its transfer to another holder.

But if the right of eminent domain exists in the Federal Government, it is a right which may be exercised within the States, so far as is necessary to the enjoyment of the powers conferred upon it by the Constitution. In *Ableman vs. Booth*, 21 How. 523, Chief Justice Taney described in plain language the complex nature of our Government, and the existence of two distinct and separate sovereignties within the same territorial space, each of them restricted in its powers, and each, within its sphere of action prescribed by the Constitution of the United States, independent of the other. Neither is under the necessity of applying to the other for permission to exercise its lawful powers. Within its own sphere it may employ all the agencies for exerting them which are appropriate or necessary, and which are not forbidden by the law of its being. When the power to establish post-offices and to create courts within the States was conferred upon the Federal Government, included in it was authority to obtain sites for such offices and for court-houses, and to obtain them by such means as were known and appropriate. The right of eminent domain was one of those means well known when the Constitution was adopted, and employed to obtain lands for public uses. Its existence, therefore, in the grantee of that power, ought not to be questioned. The Constitution itself contains an implied recognition of it beyond what may justly be implied from the express grants. The fifth amendment contains a provision that private property shall not be taken for public use without just compensation. What is that but an implied assertion, that on making just compensation, it may be taken?

THE RESERVED POLICE POWERS OF THE STATES.

It has very commonly been assumed that any action by the Federal Government, such as is necessary for the extirpation of pleuro-pneumonia and similar diseases would come in conflict with the reserved police powers of the States, and that if it were not plainly unconstitutional it would at least be an encroachment upon the sovereign rights of the States. Such a view could never have proceeded from a profound study of the Constitution or of the decisions of the Supreme Court, unless the question at issue was radically misconceived. The facts are these, the States have sovereign powers and the Federal Government has sovereign powers, each distinct and complete in themselves. The police powers of the States are for local purposes, those of the nation for general purposes. Under the reserved rights of the States, any State may, for the purpose of protecting the lives, health, or property of its citizens, extirpate a contagious disease; and for the purpose of protect-

ing inter-State or foreign commerce or removing restrictions from it, the national Government can do the same thing. The nation has no right to say to a State, "You must extirpate this disease, or you must co-operate for the extirpation of this disease," because the police powers of a State are sovereign powers, and the State may exercise them or not, as may appear best from a local standpoint. The national power to regulate commerce among the States is equally a sovereign power, and if the presence of a disease in any State interferes with this commerce, the nation can exercise its authority there and enforce such measures as are necessary to suppress the disease. There is no conflict of authority here, no encroachment upon the rights of the States - it is simply enforcing the recognized power of the nation.

In other words, this convention, as a national convention, has no right to demand that New Jersey shall extirpate pleuro-pneumonia within her borders. With New Jersey that is a local question, and New Jersey has a sovereign right to consider it purely from a local standpoint. But this convention can consistently demand that Congress should extirpate pleuro-pneumonia from New Jersey because its presence there endangers and hinders inter-State and foreign commerce over which Congress has exclusive control. These conclusions have been reached after a study of all of the decisions of the Supreme Court bearing upon the question, but only such will be quoted as are plainly applicable and are sufficient to demonstrate the position.

Chief Justice Marshall, in *Gibbons v. Ogden*, says:

But the inspection laws are said to be regulations of commerce, and are certainly recognized in the Constitution as being passed in the exercise of a power remaining with the States.

That inspection laws may have a remote and considerable influence on commerce will not be denied; but that a power to regulate commerce is the source from which the right to pass them is derived cannot be admitted. The object of inspection laws is to improve the quality of articles produced by the labor of the country; to fit them for exportation, or, it may be, for domestic use. They act upon the subject before it becomes an article of foreign commerce, or of commerce among the States, and prepare it for that purpose. They form a portion of that immense mass of legislation which embraces everything within the territory of a State not surrendered to the General Government, all which can be most advantageously exercised by the States themselves. Inspection laws, quarantine laws, health laws of every description, as well as laws for regulating the internal commerce of a State, and those which respect turnpike roads, ferries, &c., are component parts of this mass.

No direct general power over these objects is granted to Congress, and consequently they remain subject to State legislation. If the legislative power of the Union can reach them, it must be for national purposes; it must be where the power is expressly given for a special purpose, or is clearly incidental to some power which is expressly given. It is obvious that the Government of the Union, in the exercise of its express powers—that, for example, of regulating commerce with foreign nations and among the States—may use means that may also be employed by a State in the exercise of its acknowledged power—that, for example, of regulating commerce within the State. If Congress license vessels to sail from one port to another in the same State, the act is supposed to be incidental to the power expressly granted to Congress, and implies no claim of a direct power to regulate the purely internal commerce of a State, or to act directly on its system of police. So if a State, in passing laws

on subjects acknowledged to be within its control, and with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other, which remains with the State, and may be executed by the same means. All experience shows that the same measures, or measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove that the powers themselves are identical. Although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct to establish their individuality.

He then refers to acts of Congress directing the officers of the General Government to assist in the execution of the quarantine and health laws of the State, stating that these laws were considered as flowing from the acknowledged power of a State to provide for the health of its citizens. But as it was apparent that some of the provisions made for this purpose might interfere with the laws of the United States made for the regulation of commerce, Congress, in a spirit of harmony, has in some measure adapted its own legislation to this object by making provisions in aid of those of the States.

But [he adds] in making these provisions the opinion is unequivocally manifested that Congress may control the State laws, so far as it may be necessary to control them, for the regulation of commerce.

In *Cooley v. Board of Wardens of the Port of Philadelphia* it was said, in 1858, that the power to regulate commerce includes various subjects, upon some of which there should be a uniform rule, and upon others different rules in different localities. After making this distinction it is declared that—

Whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress.

Tried by this rule, the diseases which we are considering must come under the exclusive jurisdiction of Congress, because they not only admit of a uniform plan of regulation, but they can scarcely be controlled by any other means, and the crying necessity of the country to-day is a uniform plan, that will supersede the widely different and troublesome local regulations enforced during the past year.

In *Cooley's Constitutional Limitations* it is stated that—

It is not doubted that Congress has the power to go beyond the general regulations of commerce which it is accustomed to establish, and descend to the most minute directions, if it shall be deemed advisable, and that to whatever extent ground shall be covered by those directions, the exercise of State power is excluded. Congress may establish police regulations, as well as the States, confining their operation to the subjects over which it is given control by the Constitution. (p. 731.)

The opinion in the case of *Henderson v. Wickham* is still more interesting from our standpoint; for while the principles laid down are essentially the same, the language used applies more directly to the questions we are considering:

In whatever language [says the court] a statute may be framed, its purpose must be determined by its natural and reasonable effect.

* * * * *

This power, frequently referred to in the decisions of this court, has been, in general terms, somewhat loosely called the police power. It is not necessary for the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power, when not otherwise restricted, no definition of it and no urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution.

Nothing is gained in the argument by calling it the police power. Very many statutes, when the authority on which their enactments rest is examined, may be referred to different sources of power, and supported equally well under any of them. A statute may at the same time be an exercise of the taxing power and of the power of eminent domain. A statute punishing counterfeiting may be for the protection of the private citizen against fraud, and a measure for the protection of the currency and for the safety of the Government which issues it. It must occur very often that the shading which marks the line between one class of legislation and another is very nice and not easily distinguishable.

But, however difficult this may be, it is clear from the nature of the complex form of Government that, whenever the statute of a State invades the domain of the legislation which belongs exclusively to the Congress of the United States, it is void, no matter under what class of powers it may fall or how closely allied to powers conceded to belong to the States.

It has been contended [says Chief Justice Marshall] that if a law passed by a State, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject and each other like equal opposing powers. But the framers of our Constitution foresaw this state of things, and provided for it by declaring the supremacy, not only of itself, but of the laws made in pursuance thereof. The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is supreme.

Where the Federal Government has acted, he says:

In every such case the act of Congress or the treaty is supreme; and the laws of the State, though enacted in the exercise of powers not controverted, must yield to it. (*Gibbons v. Ogden*, 22 U. S.)

The next case bears directly upon the subject of police power and State quarantines. The legislature of Missouri had passed a law prohibiting the bringing of Texas, Mexican, or Indian cattle into the State between the 1st of March and the 1st of November, and making transportation companies liable for damages from Texas fever occurring along their lines. Husen brought this action against the Hannibal and Saint Joseph Railroad Company for damages alleged to have been done in violation of this act. The Court said of this act:

It is a plain regulation of inter-State commerce—a regulation extending to prohibition. Whatever may be the power of the State over commerce that is completely internal, it can no more prohibit or regulate that which is inter-State than it can that which is with foreign nations. * * * *

This court has heretofore said that inter-State transportation of passengers is beyond the reach of a State legislature, and if, as we have held, State taxation of persons passing from one State to another, or a State tax upon inter-State transportation of passengers, is prohibited by the Constitution, because a burden upon it, *a fortiori*, if possible, is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or rather it is commerce itself, and every obstacle to it, or burden laid upon it, by legislative authority, is regulation. * * * Neither the unlimited powers of a State to tax nor any of its large police powers

can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution. * * * Such a statute, we do not doubt, it is beyond the power of a State to enact. To hold otherwise would be to ignore one of the leading objects which the Constitution of the United States was designed to secure.

I will not stop to discuss the bearing of these decisions upon the State quarantine laws which so many Western States have tried to enforce during the past year. It is plain that such laws cannot be relied upon for protection, and if the commerce of the country and the cattle industry are to be rescued from the danger which threatens them, it must be by Congressional laws.

LEGISLATION.

In the past many have favored co-operation between the Federal Government and the infected States. They have given two reasons for co-operation: First, it was thought that it would be encroaching upon the rights of the States for Federal officers to go within their territory and inspect private property, interfere with the movement of animals, or destroy them to eradicate disease. It was not realized that a law passed by Congress which would virtually compel certain States to co-operate was a thousand times more a violation of State sovereignty than a law under which the Federal Government should do the work itself. The decisions which have been quoted show that the sovereign States granted to Congress the exclusive power to do work of this kind in the interests of national commerce, and if this work is to be done for national purposes—and who doubts this?—then what right has any one to expect assistance from the States either in the way of legislation or money?

The second reason for co-operation is that it is easier to get a part of the legislation from Congress and the remainder from the State legislatures than to get all from Congress. The mere statement of this proposition is, it seems to me, sufficient to demonstrate its unsoundness. Consider, if you please, how many States have no laws at all upon this subject, although they have needed them for years, how many others have only passed them under the pressure of urgent necessity, and how few of the State laws have not some radical and fatal defect, and then calculate how long it will require to get uniform and effective laws from forty different legislative bodies.

There are several very serious objections to any system of co-operation that can be devised. First, much valuable time would be lost in securing legislation from the different State legislatures authorizing co-operation, as some of these only meet once in two years, and many would object indefinitely to such action. Secondly, there is the almost absolute impossibility of securing uniform legislation in so many different States without bringing some sort of pressure to bear in the national legislation, which would certainly be an undesirable encroachment

on State rights. Thirdly, State co-operation involves consultation with State authorities and trusting much of the work to them. It divides the responsibility, makes it difficult or impossible to press the work equally and in a uniform manner, and to my mind is almost a fatal impediment to thorough work. It would be an introduction of the worst features of the English system, where, with a uniform law and uniform regulations, it is difficult or impossible to stamp out diseases because the work is left to local authorities, which are often incompetent and oftener negligent. Fourthly, it is exceedingly hard to draw the line where national action should stop and State action begin without destroying the force and efficiency of the law. A glance at the present animal industry act will illustrate this, although it was the result of numerous consultations of many intelligent men. This act makes it the duty of a national department to notify the owners of diseased cattle and the managers of transportation lines of the existence of a disease, and yet it confers no authority on the agents of that department to go into a State and find out whether the cattle are diseased or not. It provides for the expenditure of money for such quarantines and disinfection as may be necessary to prevent the spread of disease from one State to another, and yet there is no power given by which such a quarantine can be maintained. It provides a penalty for shipping diseased animals by owners and companies which have been notified, but there being no restrictions within the States, cattle change hands, are taken to other places, and finally to other States, by persons who could not be notified, and thus the law is evaded and the disease spread. In a commercial center like New York City or Philadelphia, it is practically impossible to notify all owners and managers of transportation lines, boats, &c., and equally impossible for them to know from what stables the animals offered for transportation have been taken. Finally, take section 8, which makes it the duty of the Commissioners of the District of Columbia to suppress such contagious diseases of animals as shall be brought into or shall break out in the District. This is another concession to local authority, which theoretically and practically does not appear to be worth the paper it is printed on. No inspectors are provided to discover disease; no real power is given to enter premises and inspect cattle; no money is appropriated to suppress the disease.

Having gone over most of the bills which have been drawn upon the idea of co-operation, I find in all of them these fatal defects, and if it was supposed by the authors that contagious diseases could have been practically stamped out by the adoption of their plans, this supposition is only possible because the authors were without practical experience in such work.

The suppression of the contagious diseases of animals in a great country like this with our enormous commerce in living animals, with our vast territory and our limited veterinary assistance, will be a task of great difficulty even with the most favorable and perfect laws. But a

struggle against disease under such bills as have been proposed would be doomed to failure from the beginning.

The present animal industry act has many good features and should on no account be abandoned. It needs a few amendments to make it practical and to enable the work to be done which was plainly contemplated by its enactment. I have gone over it very carefully in the light of our past experience and find that it can be made a good and sufficient law with very few amendments. These are briefly indicated below.

Amend section 1 by striking out the words "not to exceed twenty persons at any one time." This refers to the number of persons that can be employed. If the other sections are not amended, twenty employes will probably be sufficient to do all that can be done under the law as it stands. If it is so amended as to authorize the Department to stamp out diseases, then there should be no limit on the number of employes; and as many should be authorized as are necessary to legitimately use the money appropriated for this work.

Section 2 may be allowed to stand as it is.

Sections 3 and 4 were probably drawn under a misconception of the power of Congress to stamp out diseases as a protection to foreign and inter-State commerce. In the place of these there should be inserted two new sections to read as follows:

SEC. 3. That in order to promote the exportation of live stock from the United States, and to protect and facilitate the shipment of animals among the several States, the Commissioner of Agriculture shall make special investigation as to the existence of pleuro-pneumonia, or any contagious, infectious, or communicable disease of domesticated animals in all parts of the United States where he may have reason to suspect the existence of such disease or diseases. Upon the discovery of pleuro-pneumonia or or other contagious, infectious, or communicable disease which endangers the foreign or inter-State commerce of the United States, the Commissioner of Agriculture is hereby authorized to establish and enforce such quarantine regulations, and to cause such disinfection of premises as are necessary to eradicate the disease. And when in his judgment the protection of the foreign or inter-State commerce requires such action, the Commissioner of Agriculture is authorized to cause the appraisal and slaughter of animals that are affected with or that have been exposed to any contagious, infectious, or communicable disease, and to compensate the owners for the same out of the fund appropriated for the purposes of this act: *Provided*, That such compensation shall not exceed four-fifths of the value of any animal before it was exposed to the disease.

SEC. 4. That any person who obstructs a duly authorized inspector of the Bureau of Animal Industry in making the investigations provided for in section 3 of this act; or prevents him from making such investigations, or who assaults such officer when in the performance of his duty, and any person who violates the quarantine regulations established by the Commissioner of Agriculture in pursuance of this act, or who obstructs or prevents the slaughter of animals as provided for in section 3, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred nor more than five thousand dollars, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Sections 5, 6 and 7. No change.

Section 8. Should be entirely stricken out.

Section 9. No change.

Section 10. Should increase the sum appropriated to \$350,000.

Section 11. No change.

That is, of the eleven sections in the original act, seven may remain unchanged with the exception of increasing the appropriation; one section may be amended by striking out nine words; three sections should be entirely stricken out and two new sections substituted.

This is the extent of the changes necessary to make a law that it seems to me would accomplish the work that is expected from the Bureau of Animal Industry.



